

**Functional Series 300
Acquisition and Assistance**

INTERIM UPDATE 03-04

SUBJECT: New Reviews and Standards for Non-Competitive Assistance Awards

NEW MATERIAL: This Notice will be included in [ADS 303](#)

The Federal Grants and Cooperative Agreements Act of 1977 (31 USC 6301-8) "encourages competition in making grants and cooperative agreements." USAID policy is that, unless an exception is authorized, all grants and cooperative agreements are awarded competitively so that we identify and fund the best possible projects to achieve program objectives.

EFFECTIVE DATE: 04/09/2003

POLICY

**USAID/General Notice
M/OP/POL
04/09/2003**

Subject: New Reviews and Standards for Non-Competitive Assistance Awards

This Notice will be included in [ADS 303](#)

The Federal Grants and Cooperative Agreements Act of 1977 (31 USC 6301-8) "encourages competition in making grants and cooperative agreements." USAID policy is that, unless an exception is authorized, all grants and cooperative agreements are awarded competitively so that we identify and fund the best possible projects to achieve program objectives.

Under [ADS 303](#), there are seven categories of exceptions to competition, of which five are used with some frequency: 1) amendments and follow-ons, 2) unsolicited applications, 3) exclusive or predominant capability of the recipient, 4) small awards, and 5) meeting critical objectives of the Foreign Assistance Program.

These exceptions are used with a high degree of frequency in the making of grants and cooperative agreements, contrary to the spirit of the Federal Grants and Cooperative Agreements Act. Instead of being awarded based on competitive merit or pricing decisions, some awards have been made with the justifications that these entities have "done the work before," "are already on the ground and mobilized," or have developed a "special relationship" with other development organizations, host governments or aid beneficiaries themselves.

A related problem is that Agency officers sometimes make non-competitive awards benefiting one or several entities without paying adequate attention to public policy considerations or the shifting policy ramifications of those award decisions. This practice

costs the Agency the benefits, both financial and programmatic, that result from reliance on competition.

For these reasons, the Administrator has determined that decisions either to make awards valued in excess of \$10 million or to increase an on-going award by more than \$10 million without competition will require approval by Assistant Administrators (AAs).

Before the procurement request for a non-competitive award in excess of \$10 million is submitted to the Agreement Officer (AO), an Action Memorandum must be signed by the AA. The action memorandum must include a copy of the justification for non-competition as an attachment. The action memo must indicate that the AA has personally reviewed the proposed decision to ensure that there will be no negative public policy implications of such award, and has cleared the particular grant on this basis. The action memorandum must be reviewed and cleared by both the Procurement Executive (PE) and the Agency General Counsel (GC), for the same reasons. These approvals may not be delegated duties, but may be fulfilled by one serving as AA, PE or GC in an "Acting" capacity.

If the non-competitive assistance award is in excess of \$20 million and is justified by the "Amendment and follow-on" exception, the action memorandum must be submitted for the approval of the Administrator or Deputy Administrator. Review by the Administrator or Deputy is on the same basis as the approval outlined for AAs above, with the same reviews and clearances, and may not be delegated.

Furthermore, to ensure that non-competitive assistance instruments are validly supported by the justification drafted under any of the exceptions, the cognizant GC or Regional Legal Advisor (RLA) must review all justifications under ADS 303 that support a non-competitive award, or award augmentation, valued in excess of \$5 million before it is submitted to the AO.

- a) Amendments and Follow-On Awards - Mindful that a competitive process is most likely to identify the best possible projects and lead to better achievement of program objectives, the SO Team Leader or CTO must justify, with specificity and in writing, why the benefits of continuing the assistance activity with the same recipient exceeds the benefits of a competitive process favored by the law and Agency policy. A justification is not required if the amendment is for strictly administrative purposes (such as incremental funding or changes which do not require budgetary revisions). Amendments which require justifications are those which, for example, extend the life of the award and simultaneously either add additional funds or change the program description.

Please note that none of these approvals replaces the agreement officer's approval required by E303.5.5(d)(2). After the required approval discussed above has been obtained, the Agreement Officer must still make his or her own independent determination that the justification supports the award without competition and is in the best interest of USAID.

Point of Contact: Any questions concerning this Notice may be directed to Allen Eisenberg, M/OP/POL, (202)712-1467.

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